

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KIMBRA CRISWELL,)	
)	
Plaintiff,)	
v.)	C.A. No. 05-CV-00321 GMS
)	
LYDIA ADAIR MCFADDEN and CHRISTIANA)	
CARE HEALTH SERVICES, INC.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

DEFENDANTS' APPENDIX TO THEIR OPENING BRIEF IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT

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REDACTED DOCUMENTS

WHITE AND WILLIAMS LLP

/s/ Deborah J. Massaro
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*Attorneys for defendants Lydia A.
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Health Services, Inc.*

Date: October 30, 2006



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- Referral Bonuses

April 15, 2002
 Christiana Care Health Systems
 Mary Ellen Hofmann, Radiology Manager
 4755 Ogletown-stanton Road
 Newark, DE 19718

Dear Mary Ellen:

The following proposal is prepared for Christiana Care Health Systems regarding the placement of Kimbra Criswell for a temporary contract position as an X-Ray Technologist for dates of 4/15/02 through 7/13/02 under the following terms and conditions:

1) Aureus Medical will charge Christiana Care Health Systems an hourly rate of [REDACTED], with a minimum 40 hours per week (holiday weeks included). This rate includes all payroll taxes and worker's compensation insurance expenses. The hourly rate shall increase to time-and-a-half for any employee working over 40 hours in one week. The overtime rate will be billed at [REDACTED], which is calculated from the base hourly rate, not the all-inclusive rate (if applicable). The call rate for employees of Aureus Medical is [REDACTED]/hr to carry a pager, and [REDACTED] times the base hourly rate for all hours worked while on call (minimum of 2 hours). Aureus Medical's work week begins on Sunday and ends on Saturday. Aureus Medical will bill weekly, and all invoices are due upon receipt. Holiday rates apply to the following days, and may also apply when additional holidays are observed by your facility: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. Holiday pay will be billed at [REDACTED] times the base hourly rate for all holidays worked, and applies from midnight to midnight.

2) All incidental expenses will be negotiated on a case-by-case basis.

- A. Housing Arrangements (includes local phone, basic cable, and utilities) - Approx. [REDACTED]/mo, direct billed
- B. Rental Car: [REDACTED] week in car allowance, direct billed to your facility.
- C. Per Diem: [REDACTED]/week, direct billed to your facility.
- D. Airfare: N/A
- E. Other: Mileage reimbursement to/from assignment at [REDACTED]/mile, direct billed to your facility.

3) If at any time you, your organization and/or any of its subsidiaries or any other organization to which you have supplied information, hire a temporary employee of, or candidate received from, Aureus Medical, regardless of position, will be charged [REDACTED] of the individual's estimated first year's total compensation. The invoice will be processed upon offer and acceptance and is due upon receipt.

4) Referred candidate(s) and information are being supplied in complete confidence.

5) The terms of this letter supplement those set forth in the Client Agreement. Acceptance of these terms is evidenced upon your receipt of a candidate's resume or your interview of a candidate presented through our firm. Christiana Care Health Systems acknowledges receipt of the resume of Kimbra Criswell.

We look forward to a mutually beneficial and rewarding working relationship.

Sincerely,

Ray E Petty
 Staff Supervisor
 (800) 456-5857, Extension 6085

Rev. 3/15/02

A000089

CLIENT AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on April 10, 2001 between the Aureus Medical Group, a division of C & A Industries, Inc., located at 11825 "Q" Street, Omaha, NE 68137 (herein called "Aureus"), and Christiana Care Health Systems which is located in 4755 Ogletown-stanton Road, Newark, DE 19718 (herein called "Client"). The parties agree as follows:

PROVISION OF HEALTHCARE PROFESSIONALS

1. At Client's request, Aureus will present and provide Healthcare Professionals (hereafter referred to as "HC Professionals") for temporary staffing of the Client's services, who meet as closely as possible the described qualifications set forth by the Client.
2. Aureus will provide the Client with documentation of the HC Professional's qualifications as requested, to include a) resume, b) applicable certifications and licensure, c) immunization history, and d) "Confidential" verified professional references.
3. Client acknowledges that it is solely responsible for making the selection decision of HC Professionals presented by Aureus.
4. Where applicable, Client agrees to provide documentation outlining any specific pre-Assignment requirements to comply with the Client's policies and procedures.
5. Services will be performed at an hourly billing rate to be communicated to the Client by letter upon presentation of a candidate.
6. Client agrees to accept HC Professional(s) only through Aureus if their profile is submitted to the Client, orally or in writing before any other staffing representative submits the same individual's profile.
7. If the Client elects to hire an HC Professional presented by Aureus, the Client agrees to pay Aureus a recruiting/placement fee equal to [REDACTED] of the HC Professional's anticipated total first-year compensation, less [REDACTED] for each week of [REDACTED] or more which the HC Professional worked in the Client facility as an employee or subcontractor of Aureus under this Agreement.
8. Client agrees that for a period of twelve (12) months after completion of the assignment for Client by an HC Professional placed by Aureus under this Agreement, Client will not hire or contract the services of that HC Professional other than through Aureus. Should Client violate this provision, client will pay Aureus a recruiting/placement fee as provided in the preceding paragraph.

QUALITY ASSURANCE PROGRAM

1. Aureus will perform and document professional references on each HC Professional presented. These references will be obtained via direct contact with representatives of former employers and co-workers who are able to attest to the HC Professional's applicable work performance.
2. Aureus will arrange for comprehensive Medical Professional Panel (12 panel) drug and alcohol testing of all HC Professionals presented to Client. No HC Professional with a confirmed positive test result will be presented to Client.
3. Aureus will conduct reasonable background investigations of all HC Professionals presented to the Client as relevant to their suitability for work in a patient care environment. These investigations will include Social Security number verifications, professional licensure and certification verification, and criminal arrests and conviction records in all states of legal residence reported by the HC Professional within the 5 year period prior to hire by Aureus.
4. Aureus will not present any HC Professional whom Aureus has reason to believe has ever been convicted of a felony, a crime of fraud or violence, or a crime directly related to his or her profession, or has ever been subject to any criminal, civil or administrative sanction under the Medicare or Medicaid programs, government debarment, revocation or suspension of state licensure, or False Claims Act violations.
5. Aureus will require that HC Professionals complete Skills Proficiency Checklists applicable to all clinical skills for which they have training and/or experience. This documentation will include Age Specific Competency as required by JCAHO Standards.
6. Aureus will provide Client with a designated Staffing Supervisor as the primary contact for each Assignment, and who will be responsible for direct communications with, and overall coordination of the services of the HC Professional assigned.

JCAHO COMPLIANCE

1. HC Professionals provided by Aureus will possess the qualifications specified and/or agreed upon by both parties, including but not limited to the following areas: a) graduation from a recognized educational institution applicable to the clinical skills area, b) related clinical experience, and c) proficiency applicable to the duties of the assignment - as verified through completion of Skills Proficiency Checklists and professional references.
2. Aureus will be responsible for maintaining all documentation related to the qualifications of HC Professionals, including a) resume, b) applicable certifications and licensure, c) Skills Proficiency Checklists inclusive of Age-Specific Competence, d) "Confidential" verified professional references, and e) performance evaluations.

Signature:



Date:

4/17/01

3. Aureus will specify performance expectations of the HC Professional in the conditions of the contract between the HC Professional and Aureus. These performance expectations will include the following requirements: a) HC Professionals must comply with all rules, regulations, and policies of the Client, including any applicable dress code and code of ethics, b) any compromise in the quality of patient care or clinical services rendered may result in immediate termination of the HC Professional's assignment, and c) the Client shall be recognized as the on-site supervisor of professional performance and daily assignment responsibilities.
4. Aureus will be responsible for performing verifications of applicable certifications and licensures for HC Professionals. These verifications will be conducted as part of the Quality Assurance Program performed by Aureus.
5. The Client acknowledges the JCAHO requirement for providing adequate orientation to all HC Professionals to enable them to fulfill performance expectations, and Client agrees to provide this orientation prior to, or at the time the HC Professional's Assignment begins.
6. The Client assumes the responsibility for evaluating the competence of the HC Professional provided at the time of orientation and periodically thereafter. In the event the HC Professional displays unsatisfactory performance, the Client agrees to provide Aureus with written documentation to support the assessment.
7. Aureus will provide the Client with a formal evaluation form immediately prior to, or after the Assignment ends for each HC Professional provided. Client agrees to complete this evaluation form for each HC Professional and return it promptly to Aureus, at which time this document will be included in the HC Professional's personnel file.

OSHA/SAFETY REQUIREMENTS

1. Aureus will provide a Safety Training Program to each HC Professional at the time of hire consistent with applicable OSHA and CDC regulations concerning "Occupational Exposure to Bloodborne Pathogens." The training program will include information about bloodborne diseases, pathogens, Exposure Control Plan, and Hazard Communication Program.
2. Aureus will provide at no charge to their employed HC Professionals, the Hepatitis B vaccination series to those who elect to receive it, and will obtain a written waiver from those who elect not to receive it.
3. Aureus will maintain records as required and applicable to post-exposure follow-up requirements for Aureus HC Professionals.
4. Client will provide "site specific" information relative to applicable OSHA regulations and Client policies and procedures, including location of protective equipment, site procedures, and hazard signage. Client will notify Aureus immediately in the event Client becomes aware that an HC Professional has had an occupational exposure, and will cooperate with Aureus in Aureus's administration of its post-exposure protocols.

DIRECTION AND SUPERVISION

All HC Professionals accepted by Client shall, when rendering services, be under the direction and supervision of Client and not Aureus. Aureus will use reasonable efforts to conduct reliable background checks and screening procedures as described herein, but does not guarantee the outcome of any assignment of any HC Professional while under Client's direction and supervision. Client agrees that Client will not assign or utilize the assigned HC Professional in any capacity or function other than the designated area of qualification and competence without the prior consent of Aureus.

LEGAL, PAYROLL & TAX OBLIGATIONS

1. Aureus is an Equal Opportunity Employer, and as such will not discriminate in the selection and presentation of HC Professionals to the Client. Client agrees that it will not discriminate on the basis of race, color, religion, sex, age, national origin, disability, or any other prohibited factor in its acceptance, selection, assignment or rejection of any HC Professional.
2. As part of Aureus' obligation to comply with applicable laws of the Immigration and Naturalization Service, it will be required for a Client representative to complete Section 2 of the INS Form I-9 as the designated on-site agent for Aureus. Client is relieved of any liability related to this documentation, consistent with INS regulations that specify the "Employer of Record" (Aureus) as liable for the actions of a designated on-site agent.
3. Aureus will be responsible for paying the wages of contracted HC Professionals, including withholding all applicable income and Social Security taxes.
4. Aureus will be responsible for providing Worker's Compensation Insurance coverage in amounts required by law, and payment of all applicable payroll taxes, including State and Federal unemployment insurance taxes.
5. Aureus will maintain all necessary personnel and payroll records.

BILLING AND PAYMENT

1. Client will be responsible for verifying hours worked by the assigned HC Professional as documented on their Aureus time slip, accompanied by the signature of the HC Professional. Client will sign the Aureus time slip as a) acceptance that services were satisfactorily performed, b) agreement that hours worked are documented accurately, and c) authorization for billing at the rate agreed upon between Aureus and the Client.

Signature:



Date:

4/17/01

2. Aureus will invoice Client on a weekly basis for all amounts owed for services rendered. Invoices will provide detailed billing information, including a photocopy of the applicable time slip(s).
3. By accepting an HC Professional, Client agrees to assign and utilize the HC Professional for the full length of the Assignment initially agreed upon, and to pay for services rendered for that term, unless Client notifies Aureus in writing, at least fifteen (15) days in advance, of its intent to shorten the term or reduce the service required. Upon receipt of such notification, Aureus may agree to any proposed reduction in service, or may elect to terminate the service at the end of the 15-day notice period.
4. Client may require that Aureus remove a specific HC Professional only for "cause" which will be documented in a written notice provided to Aureus. "Cause" will be defined as any material violation of client policies, insubordination, unsatisfactory attendance or performance, misconduct or violation of drug abuse policies. If immediate suspension of the HC Professional is deemed necessary, the HC Professional will be placed on Paid Administrative Leave, and Client billed at the regular Assignment rate for all scheduled time until the written notice is received by Aureus.
5. If Client terminates an Assignment or suspends/removes an HC Professional prior to the agreed-upon completion date for reasons other than "cause", Client will be invoiced for the agreed-upon amount of scheduled hours at the bill rate agreed upon for the Assignment - for the remaining duration of the Assignment, including any remaining housing expenses that cannot be recovered.
6. Client agrees to pay invoices in full within 30 days of receipt.

INDEMNIFICATION

Aureus and Client shall indemnify each other, and hold each other harmless, against any and all liabilities and defense costs (including reasonable attorney fees), from claims, demands, government fines or penalties, and lawsuits, brought against the indemnified party by a third party, arising solely out of the failure of the indemnifying party to comply with its obligations under this Agreement or solely out of the negligence or intentional wrongdoing of the indemnifying party, provided that (i) such indemnification and hold harmless shall not apply to any claim, demand or lawsuit which, if brought directly against either party, would be covered by an in-force policy of liability insurance, but which is not covered for the indemnifying party by virtue of an exclusion of contractual liability or an exclusion of indemnity/hold harmless liabilities, and (ii) the indemnifying party's duties shall be contingent upon the indemnified party promptly notifying the indemnifying party of the claim, demand, fine, penalty or lawsuit, turning over the defense and settlement of the matter to the indemnifying party, and cooperating fully in such defense and settlement.

INSURANCE

1. Aureus will provide professional liability coverage of the HC Professionals, with an aggregate limit of not less than [REDACTED] and per occurrence limits of [REDACTED]. Aureus's total liability to Client for any claims, losses, expenses or damages whatsoever arising out of, or in any way related to this Agreement, shall not exceed the lesser of the total amount of fees paid to Aureus under this Agreement, or the total amount paid on behalf of Aureus by insurers under coverage's applicable to the claim.
2. In the event of litigation arising from this Agreement, the prevailing party in such litigation shall be entitled to payment of its reasonable attorney fees and costs from the other party.
3. Aureus will provide Worker's Compensation insurance coverage of the HC Professionals, in accordance with applicable stated laws.
4. In the event that any HC Professional provided by Aureus is injured while working on Client's premises under this Agreement, Client agrees to arrange for drug testing and medical care as directed by Aureus and at Aureus's expense.

CONFIDENTIALITY

1. Aureus will specify in the conditions of the contract between the HC Professional and Aureus, confidentiality requirements relative to proprietary or patient-specific information of the Client.
2. Aureus agrees that it will not disclose to any third party any information disclosed by Client that has been communicated in writing as information to be maintained as "Confidential", except as such disclosure may become necessary to comply with applicable laws.
3. Client agrees that information regarding - but not limited to rates and other remuneration; HC Professionals' references, drug test results, immunizations and antibody titer tests, physical examinations & health history, and any other information designated by this Agreement or by Aureus as "Confidential" information shall be considered proprietary to Aureus, and Client will not disclose to any HC Professional or third party any such information, except as may be specifically authorized by Aureus or required by law.

Signature:



Date:

4/17/01

ACCESS TO BOOKS AND RECORDS

To the extent required by Section 1861(v)(I) of the Social Security Act, until the expiration of four years after the furnishing of services under this Agreement, Aureus shall make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and such books, documents, and records of Aureus as are necessary to certify the nature and extent of the cost hereunder. If Aureus carries out any of its duties under this Agreement through a subcontract, for the value or cost [REDACTED] or more over a twelve-month period, with a related organization, such subcontract shall contain a clause placing the same duty on the subcontractor as this contract places on Aureus.

WAIVER

The failure of either Aureus or the Client to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or of any other provision.

MODIFICATION OF AGREEMENT

This agreement may be amended or modified in writing as mutually agreed upon by Aureus and the Client. Aureus reserves the right to modify this Agreement upon 30 days written notice to the Client. Client's failure to object to such modification within the 30-day notice period shall constitute acceptance of such modification.

NOTICE

Any "notice" and/or "notification" required to be given by either Aureus or Client in connection with and/or under the terms of this Agreement shall be provided in writing and considered effective from the date of verified receipt. This verification can be accomplished by overnight express mail (e.g., Federal Express, Airborne Express) or certified/registered mail to the applicable party's address and contact information as specified below:

AUREUS MEDICAL GROUP
11825 Q Street
Omaha, NE 68137
Fax: (402) 895-7812
Telephone: (402) 891-1118
Toll-Free: (800) 456-5857
Attention: Craig Wolf, Division Manager

Christiana Care Health Systems
4755 Ogletown-stanton Road
Newark, DE 19718
FAX: 302-733-1808
[Attention: Sharon Pietlock, Radiology Manager]

VALIDITY OF TERMS

Any term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions of this Agreement shall not be affected thereby. Aureus shall not be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control and including, without limitation, acts of God, the elements, regulation of federal, state or local government or any agency thereof.

ENTIRE AGREEMENT AND TERM

The laws of the State of Nebraska shall govern this Agreement. Any proceeding arising between the parties in any manner pertaining to this Agreement shall, to the extent permitted by law, be held in the federal or state courts located in Douglas County, Nebraska. This Agreement constitutes the entire agreement between Aureus and the Client relative to the subject matter hereof, and no other understanding which modifies the terms hereof shall be binding unless made in writing and signed by authorized representatives of both parties, except for those terms to be communicated to Client by letter upon presentation of a candidate and as set forth on any report signed by Client, which are hereby incorporated and made part of this Agreement. Intending to be legally bound, each party warrants that their respective authorized representatives execute this Agreement. Counterpart and facsimile signatures and copies shall constitute originals.

Signature:



Date:

4/17/01

This Agreement is valid for a term of one (1) year from the date of Aureus's signature below, at which time Aureus will arrange for contract renewal with the Client. Renewal will be subject to mutual approval. Either party may terminate this Agreement by notifying the other party not less than 30 days prior to the termination date.

AUREUS MEDICAL GROUP,
a division of C&A Industries, Inc.

BY: _____

TITLE: _____

DATE: _____

Christiana Care Health Systems
55 Ogletown-stanton Road
Newark, DE 19718

BY:

TITLE: Administrative Director

DATE: 4/17/01

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KIMBRA CRISWELL,)	
)	
Plaintiff,)	
v.)	C.A. No. 05-CV-00321 GMS
)	
LYDIA ADAIR MCFADDEN and CHRISTIANA)	
CARE HEALTH SERVICES, INC.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

CERTIFICATE OF SERVICE

I, Deborah J. Massaro, Esquire do hereby certify that on this 30th day of October, 2006, **REDACTED DOCUMENTS OF DEFENDANTS' APPENDIX TO THEIR OPENING BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT** was served via electronic filing and two copies were delivered U.S. First Class Mail, postage prepaid upon the following:

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Wilmington, DE 19806

Nelson Levin, Esquire
Kats, Jamison, Van Der Veen &
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25 Bustleton Pike
Feasterville, PA 17044

WHITE AND WILLIAMS LLP

/s/ Deborah J. Massaro
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